

FILED

MAR 21 2016

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHAEL MARTINDALE,

Plaintiff,

vs.

MONTANA D.O.C., M.S.P., LEROY
KIRKEGARD, MIKE BATISTA, and
M.S.P. MEDICAL DEPARTMENT,

Defendants.

CV 15-111-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this matter on February 16, 2016, recommending dismissal of the Montana Department of Corrections, the Montana State Prison, and the Montana State Prison Medical Department. The parties failed to timely object to the Findings and Recommendations, and so waived their right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United*

States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

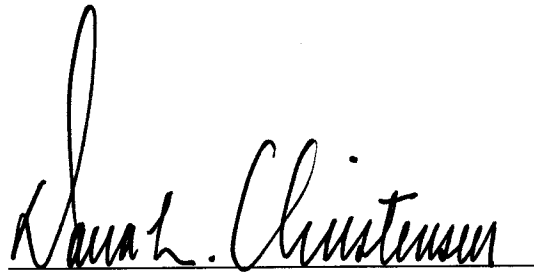
Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's conclusion that the Montana Department of Corrections, the Montana State Prison, and the Montana State Prison Medical Department enjoy immunity from suit under the Eleventh Amendment to the United States Constitution. Accordingly, these parties will be dismissed from this matter.

IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 6) are
ADOPTED IN FULL.

(2) The Montana Department of Corrections, the Montana State Prison and the Montana State Prison Medical Department are DISMISSED based upon the Eleventh Amendment.

Dated this 21st day of March, 2016.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looping initial "D".

Dana L. Christensen, Chief Judge
United States District Court